1 THE HONORABLE MARSHA J. PECHMAN 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON 9 AT SEATTLE 10 COINLAB, INC., a Delaware Corporation, No. 2:13-cv-00777-MJP 11 Plaintiff. DECLARATION OF TOD L. GAMLEN IN **OPPOSITION TO PLAINTIFF** 12 v. COINLAB'S MOTION TO COMPEL 13 MT. GOX KK, a Japanese corporation, and NOTE ON MOTION CALENDAR: TIBANNE KK, a Japanese corporation, 14 Friday, April 4, 2014 Defendants. 15 16 I, Tod L. Gamlen, hereby declare as follows: 17 18 1. I am an attorney with Baker & McKenzie, LLP, and currently one of the counsel of record herein for the defendant Tibanne KK. I am duly admitted to practice before the courts 19 of the State of California and have been admitted *pro hac vice* before this Court in this action to 20 represent defendant MtGox KK and defendant Tibanne KK. I have personal knowledge of the 21 matters set forth in this declaration. If called upon to testify in court, I could competently testify 22 as to the matters declared herein. 23 2. I have been admitted *pro hac vice* to represent defendant Tibanne KK in this 24 action and have appeared for Tibanne KK in this action. On Thursday March 20, 2014, a motion 2.5 to withdraw as counsel for Tibanne KK was filed in this action (Doc. Nos. 39 and 40) in which 26

OF TIBANNE KK'S OPPOSITION TO PLAINTIFF 1221 Second Avenue, Suite 500 Seattle, Washington 98101-2925 Telephone: (206) 623-1745 Facsimile: (206) 623-7789

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Baker & McKenzie, including myself and Daniel Valles, and the firm of Hillis, Clark, Martin & Peterson, and its attorneys Louis D. Peterson and Joseph Genster, are moving to withdraw as counsel for Tibanne KK. However, until such time as this Court grants the motion to withdraw, I am counsel of record for Tibanne KK. As such, I am submitting this declaration in opposition to Plaintiff CoinLab's motion to compel.

- 3. In September and October, 2013 I was involved in Rule 26(f) conference discussions with counsel for CoinLab. During those discussions it was agreed that because MtGox KK and Tibanne KK were located in Japan, as were the persons that worked for them, any depositions of such parties and/or witnesses would take place in Taiwan.
- 4. On November 19, 2013, CoinLab served a Fed. R. Civ. P Rule 30(b)(6) deposition notice calling for the Rule 30(b)(6) designee of MtGox KK. On or about January 6, 2014, after several meet and confer efforts over the deposition topics, CoinLab served an Amended Rule 30(b)(6) deposition notice with the final list of topics to be covered by the deposition. A true and correct copy of CoinLab's Amended Rule 30(b)(6) deposition notice and topic list are attached hereto as **EXHIBIT A**. That deposition notice scheduled the deposition of the MtGox KK Rule 30(b)(6) designee for January 21-22, 2014 in Taipei, Taiwan.
- 5. Attached hereto as **EXHIBIT B** is an email that I sent to CoinLab's counsel on November 22, 2013 asking if CoinLab was intending to take the individual depositions of Mark Karpeles and Gonzague Gay-Bouchery in Taiwan at the time he took the Rule 30(b)(6) deposition of MtGox KK; also attached is counsel's November 22, 2013 email in response.
- 6. On or about November 24, 2013, CoinLab served Rule 30(b)(6) deposition notices for MtGox NA, MtGox Inc., and Mutum Sigillum to occur at the same time as the MtGox KK deposition as CoinLab believes that "they have performed exchange services in the U.S. in breach of the Agreement's exclusivity provision." A true and correct copy of these deposition notices and accompanying e-mail are attached here to as **EXHIBIT C**.
- 7. During numerous meet and confer conversation between myself and counsel for DECLARATION OF TOD L. GAMLEN IN SUPPORT OF TIBANNE KK'S OPPOSITION TO PLAINTIFF COINLAB'S MOTION TO COMPEL -

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1	CoinLab, we reached an agreement that the Rule 30(b)(6) depositions of MtGox NA, MtGox Inc.,
2	and Mutum Sigillum would proceed on January 23, 2014 if CoinLab still felt that they were
3	necessary after deposing MtGox KK Rule 30(b)(6) witness. However, at the conclusion of the
4	MtGox KK Rule 30(b)(6) deposition, CoinLab elected not to proceed with the remaining
5	depositions as it felt that it had obtained all of the information it needed from MtGox KK Rule
6	30(b)(6) witness.
7	8. The deposition of the MtGox KK Rule 30(b)(6) designee took place on January
8	21-22 in Taipei, Taiwan. The person designated to testify on behalf of MtGox KK was Gonzague
9	Gay-Bouchery. Mark Karpeles was in attendance at the deposition in the event Mr. Gay-
10	Bouchery was unable to respond to certain questions.
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DECLARATION OF TOD L. GAMLEN IN SUPPORT OF TIBANNE KK'S OPPOSITION TO PLAINTIFF COINLAB'S MOTION TO COMPEL -

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1	9. On Thursday March 27, 2014, Daniel Valles of our office sent Edgar Sargent and
2	Roger Townsend, counsel for CoinLab, a letter enclosing a copy of the documents produced by
3	Proco Global Inc. d/b/a Chartwell Compliance ("Proco Global"). He further explained that the
4	documents from Proco Global were produced to MtGox KK on or about February 24, 2014 just
5	four (4) days before MtGox KK filed for bankruptcy protection in the Tokyo District Court.
6	During the proceeding time before the bankruptcy filing, Counsel for MtGox KK was trying to
7	process and prepare the documents for production as the formatting of the production from Proco
8	Global was difficult to process, but counsel had to cease all work after the filing of the
9	bankruptcy. Also in his letter, Mr. Valles also explained to counsel for CoinLab that Meracord
10	Company Inc. has provided no documents responsive to the subpoena to date to discuss issues
11	relating to discovery and the handling of this case in light of the bankruptcy proceedings of
12	MtGox KK. A true and correct copy of Mr. Valles' March 27, 2014 letter is attached hereto has
13	EXHIBIT D.
14	I hereby declare, under penalty of perjury under the laws of the United States of America,
15	that the foregoing is true and correct.
16	DATED this 31 day of March, 2014 at Palo Alto, California.
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18	<u>/s/ Tod L. Gamlen</u>
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DECLARATION OF TOD L. GAMLEN IN SUPPORT OF TIBANNE KK'S OPPOSITION TO PLAINTIFF COINLAB'S MOTION TO COMPEL -

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## **CERTIFICATE OF SERVICE** 1 2 I hereby certify that on the 31st day of March 2014, I electronically filed the foregoing 3 with the Clerk of the Court using the CM/ECF system which will send notification of such filing 4 to the following: 5 Roger M. Townsend Attorneys for Plaintiff 6 **BRESKIN JOHNSON & TOWNSEND PLLC** CoinLab, Inc., a Delaware Corporation 7 1111 Third Avenue, Suite 2230 Seattle, WA 98101 8 Phone: 206-652-8660 Fax: 206-652-8290 9 Email: rtownsend@bitlegal.com 10 Attorneys for Plaintiff Edgar Guy Sargent SUSMAN GODFREY (WA) 11 CoinLab, Inc., a Delaware Corporation 1201 Third Ave, Suite 3800 12 Seattle, WA 98101 Phone: 206-516-3880 13 Email: esargent@susmangodfrey.com 14 s/ Tod L. Gamlen 15 Tod L. Gamlen Baker & McKenzie LLP 16 660 Hansen Way Palo Alto, CA 94304 17 Telephone: (650) 856-2400 Facsimile: (650) 856-9299 18 Email: Tod.Gamlen@bakermckenzie.com 19 20 21 22 23 24 25 26

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